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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

THE SCO GROUP, INC., a Delaware corporation,

Plaintiff and Counterclaim-
Defendant,

vs.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-
Plaintiff.

**NOVELL'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON ITS
FOURTH CLAIM FOR RELIEF**

Case No. 2:04CV00139

Judge Dale A. Kimball

Novell, Inc. (“Novell”) moves the Court for partial summary judgment as to its Fourth Claim for Relief for declaratory relief. Specifically, Novell asks the Court to declare that Novell has the authority pursuant to Section 4.16(b) of the 1995 Asset Purchase Agreement (“APA”) to take the following actions: (1) to direct The SCO Group, Inc. (“SCO”) to waive its purported claims against IBM under the SVRX license agreements between IBM Corporation (“IBM”) and AT&T and between Sequent Computer Systems, Inc. (“Sequent”) and AT&T, and (2) because SCO refused (and still refuses) to follow that direction, to waive those claims on SCO’s behalf. In addition, Novell respectfully requests that this Court declare that SCO is obligated to recognize Novell’s waiver of SCO’s purported claims against IBM and Sequent.

Federal Rule of Civil Procedure 56(c) permits the Court to grant partial summary judgment if the pleadings, discovery, and affidavits show that there is no genuine issue of material fact and that Novell is entitled to judgment as a matter of law. Here, the undisputed facts establish that:

1. The APA gives Novell the authority, at its sole discretion, to direct SCO to waive rights under any SVRX License;
2. The IBM and Sequent Licenses are SVRX Licenses because they license rights to the UNIX System V software listed in Item VI to Schedule 1.1(a);
3. Novell directed SCO to waive its purported rights under the IBM and Sequent SVRX Licenses;
4. SCO refused to follow Novell’s direction as to both the IBM and Sequent SVRX Licenses;
5. The APA authorizes Novell to take any action on SCO’s behalf when SCO fails to take action directed by Novell;
6. Upon SCO’s refusal, Novell properly took action on behalf of SCO by waiving SCO’s purported claims against IBM and Sequent; and

7. SCO improperly refused, and still refuses, to recognize Novell's authority and to abide by Novell's waiver.

Section 4.16(b) of the APA is a broad and unambiguous grant of authority to Novell. It states in plain language that Novell may, at its "sole discretion and direction," direct The Santa Cruz Operation, Inc. ("Santa Cruz") to "amend, supplement, modify or waive any rights under . . . any SVRX License . . . in any manner or respect." If Santa Cruz refuses to follow that direction, Novell is "authorized, and hereby is granted, the rights to take any action on [Santa Cruz's] own behalf." When SCO began to advance claims of SVRX License breach against IBM and Sequent, Novell subsequently directed SCO — the admitted successor-in-interest to Santa Cruz's rights and obligations under the APA — to waive those claims. When SCO refused to follow that direction, Novell waived the claims on SCO's behalf. SCO has ignored Novell's waiver, however, and in its co-pending lawsuit with IBM, continues to advance claims of SVRX License breach. Accordingly, Novell asks the Court to accord Novell's actions the legal effect they deserve by granting this motion.

DATED: December 1, 2006

ANDERSON & KARRENBERG

/s/ Heather M. Sneddon
 Thomas R. Karrenberg
 John P. Mullen
 Heather M. Sneddon

-and-

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2006, I caused a true and correct copy of **NOVELL'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS FOURTH CLAIM FOR RELIEF** to be served to the following:

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